



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,135	08/31/2001	Jay Rossiter	50277-1786	4251

29989 7590 06/03/2003

HICKMAN PALERMO TRUONG & BECKER, LLP
1600 WILLOW STREET
SAN JOSE, CA 95125

EXAMINER

ALAM, HOSAIN T

ART UNIT	PAPER NUMBER
----------	--------------


2172

DATE MAILED: 06/03/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

PD

Advisory Action	Application No. 09/945,135	Applicant(s) ROSSITER ET AL. 	
	Examiner Hosain T Alam	Art Unit 2172	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 5-5--03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112, 2nd paragraph rejection to claim 7.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-7.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet



Hosain T Alam
Primary Examiner
Art Unit: 2172

Continuation of 2. NOTE: Newly-added claims 8-12 recites "one or more sequences of instructions by one or more processors" and thus have a new scope and require new search and/or consideration.

Continuation of 5. does NOT place the application in condition for allowance because: In the arguments presented the Applicants rely on the limitation, "said configuration information dictates a manner of operation for one or more said plurality of devices" which appears in each of the independent claims. Applicants' argument is not persuasive because Nilsen, in col. 3, lines 60-64, teaches "(t)he controller assigns database servers based on the type of request, the load on each of the servers, and priority information. The controller 132 also maintains a record of information of the type of request...". The controller dictates the operation of one or more servers because it "assigns" and it also evaluates the configuration information based on the "type of request" and "load on one or more servers". For instance, a OLAP environment causes more load on servers than in a DSS environment. The controller can identify the requirements of loads on servers from the type of request, i.e., whether it involves a large number of I/O requests. The teaching (and other not identified) indicated above meets the claim limitation of dictating operation. .

Continuation of 10. Other: Upon filing appeal, only claims 1-7 will be entered. Claims 1-7 will be rejected for the same reasons as indicated in item 5 above. Claims 8-12 will not be entered because they change the scope of the invention substantially. The IDS filed on May 29, 2003, Paper No. 12, has been placed in the file. however, has not been considered because it was filed after the final rejection was mailed. .